

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

Richmond Division

In Re: **CIRCUIT CITY STORES, INC.**

Debtor.

)
) Case No. 08-35653
) Chapter 11
)
)

**NOTICE OF MOTION AND MOTION FOR
APPLICATION FOR PAYMENT OF TAXES**

On April 17, 2009, the City of Newport News, Virginia (“City”), by counsel, filed its Motion pursuant to 11 U.S.C. § 503 for entry of an order allowing an administrative priority expense claim (“Administrative Expense Claim”) for post petition tax debts owed by Circuit City Stores, Inc. (“the Debtor”).

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not wish the Court to grant the relief sought in the motion, or if you want the Court to consider your views on the motion, then on or before June 2, 2009, you must file a written response, explaining your position, with the Court and serve a copy on the Movant. Unless a written response is filed and served on or before June 2, 2009, the Court may deem apposition waived, treat the motion as conceded and issue an order granting the requested relief without further notice or hearing.

Joseph M. DuRant, Deputy City Attorney (VSB #25053)
Representing the City of Newport News, Virginia
2400 Washington Avenue, Newport News VA 23607
Phone (757) 926-8416 Fax (757) 926-8549

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before June 2, 2009.

If you file a response to the motion, a hearing will be held on June 9, 2009 at 10 a.m. in the United States Bankruptcy Court for the Eastern District of Virginia, 701 East Broad Street, Courtroom 5000, Richmond, Virginia 23219.

Dated: April 17, 2009

CITY OF NEWPORT NEWS, VIRGINIA

By: /s/ Joseph M. DuRant
Of Counsel

Joseph M. DuRant, Deputy City Attorney
Virginia State Bar No. 25053
2400 Washington Avenue, 9th Floor
Newport News, Virginia 23607
(757) 926-8416 (phone)
(757) 926-8549 (fax)
jdurant@nngov.com

CERTIFICATION

I certify that a copy of the foregoing Notice was served on April 17, 2009 by Electronic Mail through the Court's electronic filing system or by First Class Mail through the United States Postal Service to the parties indicated below:

Daniel Blanks
dblanks@mcguirewoods.com
Counsel for Debtor

Bruce H. Besanko
9950 Mayland Drive
Richmond, VA 23233
Debtor Designee

W. Clarkson McDow, Jr.
Office of the U.S. Trustee
701 E. Broad Street., Suite 4304
Richmond, VA 23219
U.S. Trustee

/s/ Joseph M. DuRant
Joseph M DuRant

kdk7016

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Richmond Division

In Re: **CIRCUIT CITY STORES, INC.**

Debtor.

)
) Case No. 08-35653

) Chapter 11
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APPLICATION FOR PAYMENT OF TAXES

The City of Newport News, Virginia (“the City”), by counsel, hereby applies for payment from the Debtor’s estate of post-petition business personal property tangible and business, professional and occupational license taxes as an administrative expense pursuant to 11 U.S.C. § 503(b)(1)(B), and in support thereof states the following:

1. The Debtor filed for relief under Chapter 11 of the U.S. Bankruptcy Code (“the Code”) on November 10, 2008.

2. Pursuant to 11 U.S.C. § 503(b)(1)(B) the Debtor is obligated to the City for *ad valorem* business personal property taxes that attached on December 5, 2008 in the amount of \$12,125.51 under Va. Code § 58.1-3515 (“the Secured Tax Claim”). A copy of the pertinent Report of Local Taxes is attached as Exhibit A.

3. The City’s secured tax claim is deemed secured pursuant to 11 U.S.C. § 506 and Va. Code § 58.1-3942, and enjoys superiority against the collateral assets over the security interest of any other lien holder.

Joseph M. DuRant, Deputy City Attorney (VSB #25053)
Representing the City of Newport News, Virginia
2400 Washington Avenue, Newport News VA 23607
Phone (757) 926-8416 Fax (757) 926-8549

4. On December 23, 2008, this Court entered the “Final Order... Authorizing the incurrence by the Debtor of Post-Petition Secured Indebtedness...” (“Final DIP Order”, docket No. 1262). Pursuant to the terms of that Order, Paragraph 14, “Payment from Proceeds of Collateral,” a set-aside was provided for such claims as these senior secured tax claims:

“Notwithstanding the application of proceeds set forth in this paragraph 14 or any other provision of this Final Order, upon the sale outside of the ordinary course of business of any DIP Collateral that is subject to a Permitted DIP Prior Lien, proceeds from the sale of such collateral shall first be set aside in an amount equal to the sum (without double counting) of all claims (i) filed by claimants or (ii) scheduled by the Debtors (collectively, the “Identified Prior Claims”) that are secured by Identified DIP Prior Liens on such collateral.”

5. To the extent that any of the collateral assets securing the City taxes that remained from the post-petition portion of the 2008 taxes that accrued on January 1, 2009 have been sold by the Debtor, the tax lien attached to the net proceeds of the collateral assets sale, with the same validity and priority as those taxes had under Virginia law against the collateral assets sold. Va. Code § 58.1- 3942.

6. Pursuant to 11 U.S.C. § 363(c)(4), absent consent by the City or an order of the Court permitting use of this cash collateral, the Debtor “shall segregate and account for any cash collateral” in their possession. Debtor has not filed a motion seeking to use the cash collateral of the City nor has there been notice or a hearing on the use of the City’s collateral. Accordingly, absent the City’s consent, a segregated account must be established for the 2009 taxes from the sale proceeds to comply with the requirements of 11 U.S.C. § 506 and 11 U.S.C. § 363(c)(4). Therefore, it would be appropriate to segregate additional funds as adequate protection for the claims of the City for the 2009 tax year.

7. Pursuant to 11 U.S.C. § 503(b)(1)(B), the Debtor is obligated to the City for 2009 business, professional and occupational license tax, under Virginia Code § 58.1-3700, Virginia Code § 58.1-3703, and Chapter 23 of the City Code of Ordinances of the City of Newport News. This tax accrued as of January 1, 2009, and would run through March 9, 2009, the date the Debtor closed the doors of its Newport News operation. The pro rata amount due is \$7,939.00.

8. The order entered by this Court on January 16, 2009 (docket No. 1634) states that: “Nothing in this order shall alter any statutory priorities respecting the tax claims of governmental entities, to the extent any such claims are valid, senior, due and owing and become allowed claims under applicable law.”

9. A summary of pertinent Virginia and City of Newport News tax law is attached as Exhibit B.

WHEREFORE, the City of Newport News, Virginia, respectfully asks that this Court, after due consideration of this Application, approve the same and order the Debtor to timely pay the business personal property and the business, occupational and professional license taxes owing to the City; and for such other relief as may be appropriate.

CITY OF NEWPORT NEWS, VIRGINIA

By: /s/ Joseph M. DuRant
Of Counsel

Joseph M. DuRant
Deputy City Attorney
Virginia State Bar No. 25053
2400 Washington Avenue, 9th Floor
Newport News, Virginia 23607
(757) 926-8416 (phone)
(757) 926-8549 (fax)
jdurant@nngov.com

CERTIFICATION

I certify that a copy of the foregoing Application for Payment of Taxes was served on April 17, 2009 by Electronic Mail through the Court's electronic filing system or by First Class Mail through the USPS to the parties indicated below:

Daniel Blanks
dblanks@mcguirewoods.com
Counsel for Debtor

Bruce H. Besanko
9950 Mayland Drive
Richmond, VA 23233
Debtor Designee

W. Clarkson McDow, Jr.
Office of the U.S. Trustee
701 E. Broad Street., Suite 4304
Richmond, VA 23219
U.S. Trustee

/s/ Joseph M. DuRant
Joseph M DuRant

kdk7007



CITY OF NEWPORT NEWS

EXHIBIT A

Office of the Commissioner of the Revenue

April 8, 2009

TO: Kathryn Knight, Legal Secretary II, City Attorney's Office
FROM: Dava Kauffman, Deputy Commissioner of the Revenue- Business License Dept
COPY: Joseph M. DuRant, Deputy City Attorney
SUBJECT: Amended Bankruptcy Claim – Circuit City Stores, Inc. – Case #08-35653-KRH

The Office of the Commissioner of the Revenue would like to amend the bankruptcy claim forwarded to your office on March 3, 2009 for the 2009 business license tax owed by the above listed business. The business has provided a closing date of March 9, 2009, resulting in a pro-rated tax liability.

Case #08-35653-KRH
Department: 22 COMREV
Total Debt Amount: \$7,934.09
Name of Debtor: Circuit City Stores, Inc.
Date of Debt: 03/02/2009
I.D. Information: 214177 09*BL
Desc. Of Debt: 2009 Business License Tax
Tax: \$7,156.33 Pen: \$715.64 Int: \$62.12

If you should have any comments or concerns, please contact me at 926-8651 or 926-3848.

Thank you for your assistance.

COMMISSIONER OF REVENUE INFORMATION SYSTEM

CRISD5B2

LEVY HISTORY BROWSE: 214177

*** END OF FILE / SEARCH INFORMATION REACHED ***

15 CIRCUIT CITY STORES INC

0000 BUSINESS EQUIP.

YEAR/HSP	P	ADJUSTED ASSESSMENT	ADJUSTED TAX AMOUNT	TAX BALANCE	PENALTY DUE	INTEREST DUE	TOTAL DUE
2005	1	F	\$291107	\$12080.94	\$0.00	\$0.00	\$0.00
2005	2	F	\$291107	\$12080.94	\$0.00	\$0.00	\$0.00
2006	1	F	\$290211	\$12333.97	\$0.00	\$0.00	\$0.00
2006	2	F	\$290211	\$12333.97	\$0.00	\$0.00	\$0.00
2007	1	F	\$293239	\$12462.66	\$0.00	\$0.00	\$0.00
2007	2	F	\$293239	\$12462.66	\$0.00	\$0.00	\$0.00
2008	107	F	\$285306	\$12125.51	\$0.00	\$0.00	\$0.00
2008	2	N	\$285306	\$12125.51	\$1212.55	\$328.88	\$13666.94

due date
12/5/08

past petition

***** \$12125.51 \$1212.55 \$328.88 \$13666.94 *****
 SELECT WITH CURSOR AND PRESS PF KEY
 PF1: PROPERTY DESC INQUIRY PF2: LEVY HISTORY INQUIRY PF10: RETURN TO BROWSE



Commissioner of the Revenue
CHARLES D. CROWSON, JR.
 2400 Washington Ave.
 Newport News, VA 23607-4389

2008

City of Newport News Business Personal Property Return

FILING DEADLINE: MARCH 1, 2008

ACCOUNT NUMBER

214177-2008

SECTION 1: TAXPAYER INFORMATION

*****AUTO**3-DIGIT 232

CIRCUIT CITY STORES INC
 ATTN: TAX DEPT-LOC#3639
 PO BOX 42304
 RICHMOND VA 23242-2304



43 2
8892

RECEIVED

FEB 29 2008

INSTRUCTIONS ARE PROVIDED
ON THE BACK OF THIS RETURN

A DETAILED ITEMIZED LIST MUST BE
SUBMITTED WITH THIS RETURN

Virginia Code §58.1-3519 authorizes the Commissioner of the Revenue to assess property based on the best information available in any cases where the taxpayer neglects or refuses to file a return. All filings are subject to audit by the Commissioner of the Revenue at any time.

SECTION 2: UPDATE INFORMATION

NN COF

Federal ID / Social Security Number: _____ Date Business Began in Newport News: _____

If business has been sold, closed or moved, please complete the following:

(Please Check One) ☐ Sold ☐ Closed ☐ Moved Date Sold/Closed/Moved: _____

New Address: _____ City: _____ State: _____ Zip: _____

SECTION 3: BUSINESS PERSONAL PROPERTY

	Year	Computer Equipment Original Cost	All Other Furn/Fix/Equip Original Cost	Total Original Cost	OFFICE USE ONLY
PURCHASED IN:	2007				10,633
PURCHASED IN:	2006				43,466
PURCHASED IN:	2005				7,463
PURCHASED IN:	2004				—
PURCHASED IN:	2003				87,648
PURCHASED IN AND PRIOR TO:	2002				156,248
TOTAL COST					1,711,838

SEE ATTACHED

SECTION 4: DELETED, SOLD, OR DISPOSED BUSINESS PERSONAL PROPERTY

Description of Business Personal Property	Date of Purchase	Original Cost	Date Deleted, Sold, or Disposed

SECTION 5: LEASED BUSINESS PERSONAL PROPERTY

Name of Owner/Lessor	Mailing Address City/State/Zip	Description of Business Personal Property	Date of Lease	Quoted Purchase Price

SEE ATTACHED

SECTION 6: DECLARATION BY TAXPAYER

I declare that the above statements and figures are true, full and correct to the best of my knowledge and belief.

Taxpayer's Signature: Sarah Harris Date: 2/28/08

NOTE: Any such person who willfully subscribes any such return which he/she does not believe to be true and correct as to every material matter shall be guilty of a Class 1 misdemeanor. (Virginia Code §58.1-11)

SECTION 7: CONTACT INFORMATION

Please complete the following information so that our office can contact you if we have any questions regarding this return. (Please print legibly)

CONTACT NAME: Sarah Harris

PHONE: (804) 527-4000

EMAIL: _____

OFFICE USE ONLY:

F

Processed: AW

Verified: [Signature]

8-27-08 COR4



CITY OF NEWPORT NEWS
Commissioner of the Revenue

Charles D. Crowson, Jr.
Commissioner

Priscilla S. Bele
Chief Deputy

July 10, 2008

Circuit City Stores Inc
Attn: Tax Dept-LOC #3639
P O Box 42304
Richmond VA 23242-2304

RE: Account(s) 214177-2008

Dear Taxpayer:

This office is in receipt of your request for the assessed value of business tangible personal property / machinery & tools located in the City of Newport News as of January 1st, 2005 and owned by the aforementioned business.

Due to time constraints and the volume of returns to be processed, our office is unable to perform this request for the many companies that have requested this service. However, please see the formula below for which the City of Newport News determines the assessed value of tangible property.

Apply **one-third (1/3)** to the **original cost** of the property, rounding to the closest even dollar amount.

For example:

<u>Original Cost of Property</u>	<u>Factor</u>	<u>Result</u>	<u>Assessed Value</u>
\$20,000.00	1/3	\$6,666.67	\$6,666.00

The current tax rate in Newport News for business personal property is \$4.25 per \$100 and is billed in two supplements.

Please accept our apologies for any inconvenience. If you have any questions pertaining to the above, do not hesitate to contact the Business Related Taxes Department at (757) 926-8644.

Sincerely,

A handwritten signature in cursive script that reads "Mandy Ward".

Mandy Ward
Business Auditor

02/28/2008
02:08:56PM

Page 1

Summary by State Class and Acquisition Year
Declaration of Property Owned and Used by Owner

Newport News City Assessor - Oyster Point Ss

Assessment Date: 01/01/2008

Assessed - Personal Property

State Class	Year	Reported Cost	Rendered Value	Assessor's Use
Generic-Computers <=\$25,000	2007	6,027.68 -	1,990.00	
	2006	8,489.71	2,802.00	
	2005	7,462.66	2,463.00	
	2002	729.25	241.00	
	2001	16,950.53	5,594.00	
	1996	87,829.43	28,984.00	
		127,489.26	42,074.00	
State Class	Year	Reported Cost	Rendered Value	Assessor's Use
Generic-Furniture & Fixtures	2007	2,610.52 -	861.00	
	2006	8,665.15	2,859.00	
	2003	87,628.62	28,917.00	
	2002	925,408.36	305,387.00	
	2001	3,830.94	1,265.00	
	1996	451,843.94	149,114.00	
		1,479,987.53	488,403.00	
State Class	Year	Reported Cost	Rendered Value	Assessor's Use
Generic-Machinery & Equipment	2007	1,995.00 -	658.00	
	2006	26,311.61	8,683.00	
	2003	19.46	6.00	
	2002	392.61	130.00	
	2001	998.44	330.00	
	2000	797.56	264.00	
	1999	398.78	132.00	
	1998	266.47	88.00	
	1996	73,182.02	24,149.00	
		104,361.95	34,440.00	

Oyster Point Ss

Property Location: 12140 Jefferson Avenue
Newport News, VA 23602

Taxpayer's Address:
Circuit City Stores, Inc.

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FEB 29 2008

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PTMS 4.0

2007-10,633.20
2006-43,466.47
2005-7,462.66
2003-87,648.08
2002-926,530.22
2001-21,779.91
2000-797.56

1999-398.78
1998-266.47
1996-612,855.39

SprinkleL

CIRCUIT CITY STORES, INC PROPERTY TAX DEPARTMENT

DATE: 1/15/2008
TO: THE COUNTY ASSESSOR
CC: FILE
FROM: LESLIE SPRINKLE
RE: BUSINESS PROPERTY TAX RETURNS

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FEB 29 2008
NN COR

Enclosed please find the 2008 Business Property Tax Statement for the Circuit City store located in your taxing jurisdiction.

Please send a completed copy of the 2008 Business Property Statement showing all assessors' calculations, including factors, extensions and full historical value for the location.

If you have any questions, please contact me at (804)486-3984 or leslie_sprinkle@circuitcity.com. You can also contact Sarah Harris at (804) 486-2081 or sarah_harris@circuitcity.com.

02/28/2008
02:08:56PM

Summary by State Class and Acquisition Year
Declaration of Property Owned and Used by Owner

Page 2

Newport News City Assessor - Oyster Point Ss

Assessment Date: 01/01/2008

Total

1,711,838.74

564,917.00

RECEIVED
FEB 29 2008
NN COR

Oyster Point Ss

Property Location: 12140 Jefferson Avenue
Newport News, VA 23602

Taxpayer's Address:
Circuit City Stores, Inc.

214177-08

Circuit City Stores Inc

Summary by State Class and Acquisition Year
Declaration of Property Belonging to Others

Assessment Date: 01/01/2008

Newport News City Assessor - Oyster Point Ss

Tax Obligation of Owner, not Taxpayer Personal Property

State Class	Year	Reported Cost	Assessor's Use
Computers	2005	8,317.16	
		8,317.16	
		8,317.16	
Total		8,317.16	

RECEIVED

FEB 29 2008

NN COR

02/28/2008
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Oyster Point Ss

Property Location: 12140 Jefferson Avenue
Newport News, VA 23602

Taxpayer's Address:
Circuit City Stores, Inc.

PTMS 4.0

Sprinkle

EXHIBIT B

Summary Statement of Pertinent State and Local Tax Law

1. The City's *ad valorem* real estate taxes (if any) are fully secured pursuant to Va. Code § 58.1-3340 (1950, as amended) which states, in pertinent part: "There shall be a lien on real estate for the payment of taxes and levies assessed thereon prior to any other lien or encumbrance."

2. The City's *ad valorem* personal property taxes (if any) are fully secured pursuant to Va. Code § 58.1-3942 (1950, as amended) which states, in pertinent part:

"... Taxes specifically assessed either per item or in bulk against goods and chattels shall constitute a lien against the property so assessed and shall have priority over all security interests. ... For purposes of this section, taxes specifically assessed in bulk means an assessment against the specific class of property ..." [emphasis added]

3. Liability for *ad valorem* real estate taxes exists as of January 1st of each year pursuant to Va. Code § 58.1-3281 (1950, as amended) which states in pertinent part: "The beginning of the tax year for the assessment of taxes on real estate shall be January 1"

4. Liability for *ad valorem* personal property taxes exists as of January 1st of each year pursuant to Va. Code § 58.1-3515 (1950, as amended) which states in pertinent part: "...[T]angible personal property, machinery and tools and merchants' capital shall be returned for taxation as of January 1 of each year, which date shall be known as the effective date of assessment or the tax day."

5. Section 58.1-3916 of the Code of Virginia (1950, as amended) states, in pertinent part:

"... [T]he governing body of any county, city or town may ... by ordinance establish due dates for the payment of local taxes; ... may provide by ordinance penalties for failure to file such applications and returns and for nonpayment in time; may provide for payment of interest on delinquent taxes; and may provide for the recovery of reasonable attorney's or collection agency's fees ... Interest may commence not earlier than the first day following the day such taxes are due by ordinance to be filed, at a rate not to exceed ten percent per year ... No penalty for failure to file a return shall be greater than ten percent of the tax assessable on such return or ten dollars, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable ... penalty for failure to pay any tax may be assessed on the day after the first installment is due. Any such penalty when so assessed shall become a part of the tax ..." [emphasis added]

6. Section 40-212 of the Newport News City Code authorizes the payment of certain taxes in two installments: one half is due on June 5 and the other half is due December 5, annually.

7. When taxes are not paid when due, Section 40-215(b) of the Newport News City Code imposes a penalty of ten percent (10%) of the unpaid tax, and provides that any such penalty when so assessed shall become a part of the tax.

8. When taxes are not paid when due, Section 40-215 of the Newport News City Code imposes a penalty of ten percent (10%) and interest at the annual rate of ten percent (10%) on the total sum of such taxes owed, including any penalty applicable thereto, computed monthly for each calendar month.

9. Va. Code § 58.1-3700 states that local governments may require by ordinance a license tax on any business employment or professional within the locality. Newport News Code § 23-1, which adopts state law. The tax runs from January 1 to December 31 of each year. Newport News Code § 23-4. Newport News Code § 23-5. A retail business is subject to the business license tax. Newport News Code § 23-54. Business license taxes are due on or before March 1st of each year.